



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. BDS 1798-96
AGENCY DKT. NO. 1547

**In the Matter of the Suspension
or Revocation of the license of**

JAMES A. HUDDY, Ph. D.,

Denise A. Cobham, Deputy Attorney General, represented petitioner, NJ State Board of Psychological Examiners (Peter Verniero, Attorney General of New Jersey, attorney)

Richard A. Amdur, Esq., represented respondent
(Amdur Boyle Maggs & McDermott, attorneys)

Record Closed: July 9, 1996

Decided: July 24, 1996

BEFORE **JEFFREY A. GERSON**, ALJ:

PROCEDURAL BACKGROUND

On July 26, 1994, a complaint was filed before the Board of Psychological Examiners accusing James A. Huddy, Ph.D. of unethical and unprofessional conduct. (See attached complaint for statutory citations).

The essence of the complaint was that Huddy had had sexual relations with a patient identified as Marie D.

The Board of Psychological Examiners forwarded the matter to the Office of Administrative Law for hearing on or about February 21, 1996. The hearing was scheduled for July 8, 1996 and concluded on July 9, 1996. There were no post-hearing submissions and this decision is being rendered without benefit of a transcript of the proceedings.

ISSUE

The only issue to be resolved is what penalty Doctor Huddy should suffer as a result of his misconduct.

BACKGROUND

Since no dispute exists with respect to the Doctor having had sex with Marie D. and having made her pregnant*, Doctor Huddy contended that the sanction should be something less than revocation. Counsel from the Attorney General's office indicated that anything short of revocation would amount to an unacceptable compromise.

Given the position of the parties, the hearing was geared toward revealing the circumstances surrounding the professional relationship of Huddy and Marie D. The difference in Marie D.'s version of her relationship with Huddy and Huddy's description of his relationship with Marie D., was so significant that a thorough assessment of credibility became absolutely essential.

TESTIMONY

Marie D., suffering from what was subsequently described as rather severe psychological symptoms of depression, among other things, made an appointment with Huddy in March 1989 after he was recommended by her family practitioner.

At her first appointment with Huddy, he administered a psychological test which had to be sent out for scoring.** At a second session on April 4, 1989, Huddy discussed the result of the test with Marie D.

According to Marie D., on her third visit to Huddy, he took her into a separate room in which a couch was located and she was hypnotized. She concluded that she had been hypnotized because, after being awakened by Huddy, he told her of a disclosure she had made concerning an affair she was having with another man. She was absolutely certain she had not previously disclosed this affair to Huddy nor did she have any intention of doing so. This episode not only convinced Marie D. that Huddy had hypnotized her, but reinforced her impression of Huddy as being "God-like".

* Facts admitted by Doctor Huddy.

** S-2 in evidence is the Million Clinical Multi-Axial Inventory for Professional Use Only, the actual test result forwarded to Huddy for Marie D.

On her fourth visit, Marie D. felt that Huddy was treating her more like a friend than a patient. He gave her a hug and started talking softly into her ear and touching her sexually. She did not resist and sexual intercourse followed. Huddy had given her the impression at the time, that this sexual encounter would be helpful in improving her relations with others since she had previously indicated to him that she had little to no enjoyment when engaging in sex. Marie D. went on to describe a course of treatment by Huddy exceeding 30 visits in which each and every visit amounted to no more than sexual gratification for Huddy and admittedly for herself. Marie D. went on to highlight the degree of familiarity which built up between her and Huddy by indicating that he started to keep "gel" in his desk because she would be "dry". Huddy also recommended that she start doing the Kegel movement to improve her sexual performance.

A wide variety of sexual positions, a significant amount of foreplay, and even oral sex became the essence of Marie D.'s psychotherapy sessions.

On one occasion, Marie D. requested that rather than devoting the entire session to sex, she would like to be able to talk to Huddy for "15 minutes". At the end of a sexual foray, Huddy would thank her for his orgasms and emphasize that the relationship between the two of them was "our secret".

In December 1989, the month in which Huddy admits having sex with Marie D. once, she alleges that there was an exchange of Christmas gifts. Marie D. gave Huddy, what she thought was a pinkie ring and a music box. She further contends that Huddy gave her a pair of earrings (S-4 in evidence) at the same session.

Sometime in February or March 1990, Marie D. recalls being at Huddy's office and feeling very sick. She did not know at the time that she was pregnant, nor did Huddy. He recommended that she go to Paul Kimble Hospital, which she did, and subsequently went to Planned Parenthood because she did not get her period. It was then that she was told that she was pregnant. Although she is not sure of the date of her notification of being pregnant, she does recall that she was staying at a motel because she was separated from her husband.

Marie D. did not tell Huddy of her pregnancy for at least a couple of weeks later, and she described Huddy's response to the news as rather cordial. She described Huddy as being "super nice to her" and offering to take her for an abortion. According to her, Huddy offered to

pay half while she would have to pay the other half. She was not interested in getting an abortion.

Marie D. said that her refusal to have an abortion was followed by an attempt by Huddy to have the baby put up for adoption. When she was four or five months pregnant, Huddy sent her to an attorney to discuss this option, but Marie D. was not interested. When she was discussing the adoption option, Marie D. told the attorney that the night before she had had sex with Huddy. While Marie D. was with the attorney, Huddy called the attorney's office and the attorney left the room to speak to Huddy. That night Huddy called Marie D. at home to discuss what had happened at the attorney's office.

Shortly thereafter, an agreement was prepared by one of Huddy's attorneys in which Marie D. was to receive \$5000 in exchange for not putting Huddy's name on the birth certificate and for removing him from the child's life. Though this agreement was never signed and, in fact, was countered when Marie D. got an attorney of her own, she did review the agreement making pencil notations in the margins. (See S-5).

Though Marie D. could produce receipts for therapy sessions given to her by Huddy only for the time period between March 1989 to late January 1990, she did indicate that the sexual relationship continued all the way to February 1991.

Despite the length of the relationship, according to Marie D., near the end, even the sexual portion of the relationship started to change. Huddy prohibited her from coming to the office and started to meet her surreptitiously either in her car, his car, or in a nearby park.

A daughter, named Dana, was born to Marie D. on August 22, 1990. Within 45 minutes after the birth, Marie D. called Huddy and left a message with his office. He returned her call rather quickly, at which time he asked that she not put his name on the birth certificate and told her he would get her a trailer if she didn't.

On approximately August 29, 1990, one week after the birth of Dana, Marie D. went to Huddy's office with Dana and had sex with him again while Dana was placed on a blanket on the floor.

The relationship took a turn for the worse when Marie D. realized that Huddy wanted nothing to do with their daughter, Dana. It was at this point that Marie D. detected an

increasing coldness in the relationship with Huddy. Soon there was a steady deterioration of civility and a flurry of court activities including restraining orders issued against both Huddy and Marie D. along with the institution of a medical malpractice case and the institution of this revocation hearing.

Huddy's version of events was significantly different from that described by Marie D. Though his description of the first two visits was not markedly different than Marie D.'s description, the gap begins to widen at visit three. Huddy indicates that he did not hypnotize Marie D. but did engage in "relaxation techniques".

Huddy described the psychotherapy that took place between March 1989 and December 1989 as uneventful. Then, on either December 8 or December 15, 1989, Huddy admitted that he had sexual intercourse with Marie D. As the session ended, Huddy says that Marie D. stood next to him with one of her legs planted behind his leg and her other leg planted in front of his leg, while at the same time reaching over and caressing his genitals. He was so "taken aback" and "surprised" by this action that he did not respond as he should have and proceeded to have sexual intercourse with Marie D. It was, of course, this one episode of sexual involvement that resulted in Marie D.'s pregnancy.

Huddy indicated that he did not grasp the full implication of what he had done until the following day. He did not, however, take any immediate steps to try and ease the impact of his indiscretion. At some unknown point, he recommended that Marie D. seek treatment elsewhere.

According to Huddy, sometime after he had sexual intercourse with Marie D., he received a phone call from her telling him that she was pregnant. Although Huddy could not recall much of the conversation at all, he did remember being disturbed by the news, knowing that he had had sex with Marie D.

Huddy denied giving Marie D. a Christmas gift in December 1989, but did admit, and actually produced, the pinkie ring he accepted from her. In fact, he testified that it was not the only gift that she had given him during the course of their relationship. Though he denied giving Marie D. a Christmas gift, he did testify that on another occasion he gave her cash to cover the cost of a motor vehicle ticket she had received.

Huddy's recollection of the therapy he afforded to Marie D. can at best be characterized as "hazy". The reason for his lack of recollection was that her treatment records were destroyed in a flood at his house. This flood took place on October 31, 1991. According to Huddy, the loss of Marie D.'s medical records left him at a disadvantage, for he could not relate in detail what had happened during the course of the treatment or when he referred Marie D. to another source for therapy.

DISCUSSION

It is axiomatic that the purpose of a Board proceeding concerning either the revocation or suspension of a medical license is not to punish the licensee, but rather to protect the public from immoral, disreputable or incompetent practitioners. The function of the Board is not only to consider the licensee's act, but also to consider the harm to the public if such acts remain unpunished. Thus, though the Board's objective is not to punish but to protect, serious sanctions against offenders do, as a by product, have a deterrent effect on license holders.

Huddy acknowledges that his tryst with Marie D. was both unethical and immoral but it was nonetheless an isolated incident which took place in an otherwise complaint free 40 year practice. Although I suspect that if the outcome of this matter was contingent upon accepting as true Huddy's version of the incident, the result would be revocation, I do not find it necessary to analyze this matter from that perspective for, I FIND that Huddy's testimony, from the manner in which it was delivered to the essence of its content was absolutely incredible.

For example, in early 1991, Huddy, after having been served with a multicount malpractice action filed by Marie D., gave the complaint to his attorneys who filed an answer on his behalf. Having impregnated one of his active patients, who was now filing a malpractice case, it is inconceivable he would not have pulled her file from either the active or inactive cabinet. The alleged destruction of her file in a flood several weeks after he answered the malpractice suit was used as a crutch for all of Huddy's testimony, a crutch which, I suspect, he created to assist himself through his crippled testimony.

For example, Huddy testified that after learning that Marie D. was pregnant, he gave her a list of several attorneys to choose one to consult concerning the possibility of placing the child for adoption. He testified that he chose these attorneys from some type of directory listing based on their specialties. Huddy would have the undersigned believe that the same

attorney that Marie D. happened to choose for a consultation, an attorney that Huddy allegedly did not even know, subsequently became the attorney he hired to represent him in the paternity action. Marie D.'s version that Huddy sent her to his attorney, not one chosen from list is clearly more credible.

For example, despite Huddy having already admitted paternity in Superior Court, he engaged in semantic legerdemain, to avoid admitting he was the father. After being asked several times by both the Deputy Attorney General and me whether or not he was the father, he continued to repeat the answer "I have accepted responsibility for the child". When confronted with the demand that he admit that he was the father, he continued to insist on saying "I have accepted responsibility for the child". It was not until his own attorney, by tone of voice and inflection in the questioning, insisted that he admit that he was the father, did Huddy do so.

For example, a review of S-5 in evidence, the settlement agreement in which \$5000 was to be paid to Marie D., discloses little, if any, consideration for the future of the child. In fact, the entirety of the agreement, considering the circumstances, would have to be construed as distinctly favorable to Huddy. Nonetheless, he testified that his concern with respect to the agreement was actually for the child.

For example, more than six years after Huddy admits to having sex with Marie D., he still testifies that it was, in essence, the victim's fault because she was "sexually aggressive". And, if it wasn't the victim's fault, it was the fault of his schooling, since though he was instructed not to have sex with a patient, he was never instructed on techniques to avoid sexually assertive patients.

As can be seen from a close consideration of the foregoing, this conclusion is inescapable: the whole of Doctor Huddy's testimony suffered from a most severe impairment of credibility and I accept virtually none of it as true.

Furthermore, in stark contrast to Huddy's characterization of Marie D. as being the "sexual aggressor" is the personality assessment of Dr. Ernest Mastria (S-14 in evidence) in which he states:

It is with the above-mentioned developmental history and symptoms that Ms. D. sought psychotherapy. It was feelings of self-worthlessness, anxiety, depression and marital difficulties that prompted her to enter psychotherapy with Dr. Huddy. In entering the contract with

Dr. Huddy, Ms. D. placed herself under his control and direction in order to have her symptoms alleviated. He, as her doctor, took charge of her emotional health and welfare. In this situation, Ms. D. was vulnerable and subject to Dr. Huddy's suggestions. She trusted, saw him as powerful and took his direction. When he allegedly paid sexual attention to her, she found comfort, security and protection. This was in direct contrast to the state in which she came into psychotherapy one where she was depressed, anxious, feeling rejected in her marriage, insecure, self-critical and confused. She followed his direction as a result of the trust that she placed in him, the power that she afforded him because of his role, the protection that such an intimate relationship afforded her and because the "special" relationship tended to reduce her discomfort from anxiety, depression and insecurity. She was able to trust the doctor and feel intimacy and closeness, not possible during her background and in her marriage. This kind of situation was particularly attractive to Ms. D. This inappropriate sexual interaction destroyed any possibility for Ms. D. and her husband to reconcile their differences and rectify their marriage.

Over time, she began to question the relationship in that it tended not to exist outside of the sexual relationship. Although she did question the relationship, she did continue to follow Dr. Huddy's direction because of her perception of him as powerful. With her pregnancy and birth of her daughter, Ms. D. believed that her "special" relationship with the doctor was confirmed and caring. However, the relationship continued to focus only on the sexual area and all other areas continued to be eliminated including that of the infant daughter. Upon questioning this situation, Ms. D. came to believe that the doctor's only interest in her was sexual. As a result, she felt betrayed, rejected and devastated. She felt that her vulnerability had been exploited and that her closeness and openness, as well as her trust, were betrayed. This situation left Ms. D. in a worse condition than when she began psychotherapy. The ability to express her thoughts and feelings, which were to be the focus of psychotherapy, had been punished severely. She had attempted expression and found her attempts to be used and manipulated by a person in whom she trusted. Likewise, her ability to be close, open and intimate, which were disturbed and distorted at the beginning of psychotherapy were damaged even further. Most significantly, her ability to trust, that is to correctly anticipate and predict a person's behavior, was significantly damaged.

Finally, even the report submitted by Dr. George A. Anthony on behalf of Huddy is quite disturbing. Apparently, Huddy's therapy with Anthony began in October 1992 and continued into late 1994. Dr. Anthony states:

He (Huddy) also began to develop insight into the reality that his sexual relationship with a patient was not a matter of behavior between consenting adults but that core issues of ethics were involved.

Can this mean that after two years to reflect on his actions and 40 years of practice, that Dr. Huddy is now first developing insight into the sanctity of the physician-patient relationship?. This analysis is shocking. It is unconscionable for there to be an implication by Dr. Huddy's expert that "Had Dr. Huddy been more sensitive to the dynamics of the interpersonal interaction between his patient and himself, he would have been better prepared to treat any sexually-toned behavior on the part of his patient". Is it to be inferred that a doctor of Huddy's experience was unprepared to resist a sexual overture from a patient and therefore his behavior should be somehow excused?

Though there was some minor lip service by Huddy which could well be interpreted as remorse, that one minor mention gets buried in Huddy's self pity. Huddy would have this tribunal believe that his predicament is not the fault of his atrociously poor judgment but rather the result of a sexually over-aggressive woman who once scorned would not relent.

In short, in attempting to balance mitigating factors against aggravating factors, there is little, if any, favorable aspect to Huddy's case other than the absence of other complaints. The aggravating factors, which are completely overwhelming, leave little doubt that Huddy's license should be revoked.

I do, as a matter of fact, find Marie D.'s testimony to be highly credible and totally persuasive. She was visibly and emotionally pained during the course of her testimony but endured quite courageously a rather detailed and convincing reiteration of her relationship with Huddy. I have absolutely no doubt that Huddy had sexual intercourse with Marie D. closer to fifty occasions than to one and that these resulted in severe psychological damage to her.

ORDER

It is **ORDERED** that James A. Huddy's license to practice psychology in the State of New Jersey **BE** (and is hereby) **revoked**. Costs and fees are to be assessed by the Board of Psychological Examiners.

I hereby **FILE** my initial decision with the **BOARD OF PSYCHOLOGICAL EXAMINERS** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PSYCHOLOGICAL EXAMINERS**, which by law is authorized to make a final decision in this matter. If the Board of Psychological Examiners does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with *N.J.S.A. 52:14B-10*.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE SECRETARY, BOARD OF PSYCHOLOGICAL EXAMINERS, 124 Halsey Street, P.O. Box 45017, Newark, New Jersey 07101**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

7/24/96
DATE

7/26/96
DATE

DATE
/g

JEFFREY A. GERSON, ALJ

Receipt Acknowledged:

Paul C. Brush
Executive Director

Paul C. Brush
BOARD OF PSYCHOLOGICAL EXAMINERS

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW